

WISCONSIN DEPARTMENT OF NATURAL RESOURCES INTENDED USE PLAN
Covering Funding During State Fiscal Year 2005 & For Receipt of the EPA Federal Fiscal Year 2004
Clean Water SRF Capitalization Grant

I. INTRODUCTION

Section 606(c) of the Water Quality of Act of 1987 (P.L. 100-4), requires that the State develop an annual Intended Use Plan (IUP) identifying the uses of funds available for its Clean Water state revolving loan program after providing for public comment and review. For the projects in this IUP funded in state fiscal year (SFY) 2005, funding policies and methods for distribution of funds were made available to the public for comment in May 2004. Projects funded from other state fiscal years are subject to the corresponding year's funding policy. Assurances and specific proposals for meeting federal requirements identified under Section 606(c)(4) are provided in Attachment 2 (environmental review procedures) and Attachment 8 of the Operating Agreement between the State and EPA.

This document and attachments, which comprise Wisconsin's SFY 2005 IUP, indicate the intended use of the federal fiscal year (FFY) 2004 Clean Water State Revolving Fund (SRF) capitalization grant and required state matching funds, as well as the undisbursed funds remaining from the FFY 2003 grant. The IUP is a part of Wisconsin's capitalization grant agreement package for FFY 2004 SRF funds and covers anticipated activity during SFY 2005.

II. DESCRIPTION OF THE CLEAN WATER FUND PROGRAM AND FEDERAL SRF

The State of Wisconsin Clean Water Fund Program (CWFP) operates a financial assistance program consisting of Federal and State Accounts. (The accounting structure of the CWFP is described in Attachment 3 of the Operating Agreement.) The Department of Natural Resources (DNR) and the Department of Administration (DOA) jointly administer the program under the Environmental Improvement Fund (EIF).

The Federal Account constitutes the SRF. It is structured as a direct loan program. Proceeds from general obligation bonds issued by the State provide the state match.

The State Accounts are part of the state-run program. Proceeds from general obligation bonds issued by the State are used to establish a reserve account pledged as security for issuance of state Clean Water revenue bonds. Proceeds from the revenue bonds are loaned to municipalities. Interest earnings on the reserve account plus earnings derived from a subsidy fund are used to reduce the interest rate on a municipality's loan, thus providing an interest rate subsidy.

This IUP focuses on the loans made from the Federal account--the state's SRF. There may be references in the IUP to the State leveraged program; however, these references are intended only to demonstrate the commitment of Wisconsin in addressing water quality initiatives included in the Clean Water Act and that the State leveraged program and State's SRF act complementarily to achieve the Act's goals.

III. DESCRIPTION OF THE INTENDED USE PLAN

The IUP provides a description of the short- and long-term goals for the Federal SRF. It includes funding policies, a list of projects which will receive funds from the Federal Account, their estimated loan amounts, type of loan assistance, estimated binding commitment date and estimated construction start date.

Information contained in this IUP on the project priority funding list, funding policies, and method of distribution of funds, for projects funded in state fiscal year 2005, is provided to the public in the publication, *Loan Interests*, Number 134 (available from DNR Bureau of Community Financial Assistance).

Funding policies explained in *Loan Interests* apply to both the State Accounts and the Federal Account which together comprise the CWFP revolving loan program. Table 1 identifies "equivalency projects" and "post-equivalency projects" that will receive funds "directly made available" by the capitalization grants as well as the other "cash draw projects". Also listed are the Land Recycling Loan Program (LRLP) projects that have been funded so far and the one project funded with money from the Federal Rural Hardship Grants Program. Table 1 also indicates which state fiscal year the projects were or will be funded in.

This IUP is based on Wisconsin's receipt of their FFY 2004 capitalization grant, (estimated at \$35,828,496), and the state's required 20 percent match (\$7,165,699). The required state match is authorized under state law. General obligation bonds equivalent to the necessary state match will be issued prior to any draws on the capitalization grant.

IV. GOALS OF THE FEDERAL SRF PROGRAM

The Federal government started providing capitalization grants to states beginning in FFY 1989, as provided in Title VI of the Water Quality Act of 1987 (CWA). The CWA initially established that capitalization grants would be provided through FFY 1994, but Congress has continued to authorize allocation of capitalization grant funds. These grants, along with the required state match, are being used to establish the Federal Account of the CWFP designed to operate in perpetuity to provide low interest loans for water pollution control projects.

During SFY 2000, as the existing goals for the CWFP were outdated, new goals were developed for the program. These revised goals are listed below.

Short-Term Goals:

- Develop effective partnerships with other State and Federal financing sources to coordinate funding and promote efficiency for both the agencies and the applicants;
- Develop strategies, programs, and mechanisms to ensure that municipalities are able to address the highest priority water quality problems; and
- Direct funds to the state's most urgent water quality and public health needs.

Long-Term Goals:

- Provide public outreach and education regarding program policies, procedures, and participation;
- Assist municipalities in achieving and maintaining compliance with all applicable state and federal water quality requirements and standards;
- Protect the public health and environmental quality of the state;
- Manage the revolving loan fund in such a way as to protect its long-term integrity and enable it to revolve in perpetuity;
- Provide economic assistance to municipalities, including those who may not have substantial credit histories, for the purposes of constructing and maintaining water quality related infrastructure; and
- Clean up environmental contamination affecting groundwater and surface water.

V. LAND RECYCLING LOAN PROGRAM

The State of Wisconsin's Land Recycling Loan Program (LRLP) was created in the 1997-1999 Biennial Budget as Act 27. This established a \$20 million loan program within the EIF with the purpose of providing subsidized interest loans to cities, villages, towns and counties for remediation of "brownfield" sites. These sites include contaminated landfills and sites or facilities at which environmental contamination has affected or threatens to affect groundwater or surface water. The program will remedy environmental contamination affecting groundwater or surface water at sites where a hazardous substance was discharged on or after May 21, 1978, or at a solid waste facility or an approved mining facility. Administrative rules for the program, Chapter NR 167, Wis. Adm. Code, were adopted by the Natural Resources Board in January 1999 and became effective June 1, 1999.

Eligible projects must qualify as a remedial action and be part of a remedial action options report that has been reviewed and approved by the department. They must also meet the following criteria in order to be eligible:

- the project must be to remedy environmental contamination of a landfill, site or facility;
- the landfill, site or facility must have environmental contamination which has affected, or threatens to affect, groundwater or surface water;
- the political subdivision applying for the loan must own the landfill, site, or facility;
- the environmental contamination to be remedied must not have been caused by the political subdivision that is applying, (except landfill remediation projects).

Projects must comply with department design, implementation, operation, maintenance, and monitoring requirements.

The Land Recycling Loan Program has been included in the state's 319 Report, the Nonpoint Source State Management Plan.

Applications are accepted on an annual basis, with two application deadlines. Applications received by October 1st receive first priority. If any funds remain, then applications received by the second deadline of February 1st may receive funding. An annual funding list is established that ranks approved applications. If funds are insufficient to finance all the approved projects in a year, funding will be allocated based on the assigned priority score of the project. The priority scoring and criteria system assigns points based on the project's ability to reduce environmental pollution, threats to human health, and, for non-landfill projects, the extent that the project will prevent development of undeveloped lands. The scoring system is detailed under s. NR 167.07, Wis. Adm. Code.

No more than 40% of the available funds in any fiscal year can be allocated to landfill projects. In any biennium, no applicant can receive more than 25% of the present value subsidy allocated to the LRLP for the biennium under s. 281.59 (3m)(b), Wis. Stats. Loans for eligible projects must be closed within 12 months of the date that funding is allocated to the projects.

LRLP loans have an interest rate of 0%, but there is a 0.5% annual loan servicing fee which is charged and collected outside the SRF. Loan terms and payment dates are the same as for regular CWFP projects. Loans are secured with a General Obligation Note or Bond. Monies to fund loans under the LRLP come from repayments of loans under the Federal accounts of the CWFP.

As of October 1, 2003, the department had received 9 applications for LRLP projects for SFY 2005, with estimated total project costs of \$17,099,045. The LRLP has only \$9,090,485 in funds available at this time, leaving a shortfall of \$8,008,560. The existing funds have been allocated in priority order to these applications.

Projects that submitted a Priority Evaluation and Ranking Form are scored and ranked on the LRLP project priority list. Projects receiving LRLP assistance will be described in the SFY 2005 Annual Report.

VI. CLASSIFICATION OF AND INTEREST RATES FOR PROJECT TYPES

The State of Wisconsin's CWFP is an environmentally prioritized loan financing program for municipal water pollution control projects. The State has statutorily set interest rates based upon project type reflecting environmental priorities. To meet the above goals, the CWFP contains six types of categories under which projects are classified. Projects receiving Federal SRF funding will be classified as one or more of the following:

- Compliance Maintenance and New/Changed Limits Projects : These projects are necessary to maintain compliance with permit requirements or implement new or changed limits required by the DNR. Eligible projects will receive a loan at 55% of the state's cost of borrowing, as determined by the market rate on issued revenue bonds.
- Urban Stormwater and Urban Nonpoint Source Projects : Eligible projects will receive a loan at 65% of the state's cost to borrow funds. The revised rules for the CWFP, which include provisions for funding these types of projects, went into effect on March 1, 2001.
- Unsewered Projects : Eligible projects will receive a loan at 70% of the state's cost to borrow funds.
- Violator Projects and those portions of projects which provide industrial and reserve capacity: Eligible projects or portions of projects in these categories will receive market rate loans.
- Hardship Projects : Certain projects may be eligible for loans at interest rates less than those described in 1 through 5 above, in circumstances where the municipality qualifies under criteria contained in s. 281.58(13), Wis. Stats. In these situations, loans with interest rates of as low as 0% may be awarded. (The hardship program can also provide grants; however, grants cannot be funded by the Federal Direct loan program and must be provided by the state proprietary program.)
- Land Recycling Loan Program Projects : Eligible projects include contaminated landfills and sites or facilities at which environmental contamination has affected or threatens to affect groundwater or surface water. These projects receive a loan with a 0% interest rate.

The above classification system categorizes needs and approximates the priority ordering of projects. The actual priority ordering of projects on the funding list is based on the factors contained in ch. NR 162, Wis. Adm. Code. The priority score assigned to a project under ch. NR 162, Wis. Adm. Code, takes into account the following:

1. project category type,
2. septage and leachate treatment,
3. human health impacts,
4. fish and aquatic life impacts,
5. wild and domestic animal impacts,
6. outstanding and exceptional resource waters,
7. population.

While compliance maintenance and new/changed limits projects will generally be higher on the funding list than other types of projects, there may be some variation at the individual project level.

Projects being funded under the LRLP are ranked separately from the other CWFP projects. The priority scoring system is detailed under s. NR 167.07, Wis. Adm. Code.

VII. METHODS AND CRITERIA FOR DISTRIBUTING FUNDS

The 2003 - 2005 biennial budget brought the total general obligation bonding not to be exceeded by the CWFP to \$637.7 million based on the needs identified in the state's CWFP Biennial Finance Plan. The Biennial Finance Plan indicated the cost of wastewater treatment needs, financial assistance proposed, source of financial assistance and expected composite annual interest rate of the financial assistance provided for water pollution control needs.

Each municipality intending to apply for a CWFP loan or an LRLP loan during July 1, 2004 - June 30, 2005 was required to submit a Notice of Intent to Apply (ITA) form by December 31, 2003.

The Clean Water Fund Program Project Priority List (state project priority list), contained in *Loan Interests*, #134, lists projects in descending order of their priority scores. The Project Priority List includes those projects expected to receive a loan from the funds within the Federal Account of the CWFP.

The federal project priority list for the cash draw projects is a subset of the state project priority.

VIII. ALLOCATION OF SRF FUNDS

Table 1 of the IUP shows projects anticipated to receive Federal SRF funds. Projects selected to receive Federal SRF funds were subjected to the CWFP allocation criteria listed in VI above. Information pertinent to each SRF project is contained in Table 1 pursuant to Section 606(c)(3) of the CWA.

As of March 31, 2004, the State had available a total of \$84,817,573 in the Federal SRF from repayments of principal and interest, as well as from earnings on account balances, prepayments and loan transfers. These funds, along with the \$42,994,195 in loan funds from the 2004 Capitalization Grant and state match, and the \$30,663,468 remaining as of March 31, 2004, from the 2003 Capitalization Grant and state match brings available loan funds to a total of \$158,475,236. In addition, the state is expecting \$44.6 million in principal repayments and interest by May 2004.

Table 1 of this IUP shows a total of \$238,377,313 of undisbursed eligible loan balances (as of March 31, 2004). In addition, the state has set aside \$20 million for the brownfields initiative of which \$9,090,485 is remaining, and \$6 million is used annually to fund the debt service on the state match bonds. This leaves a potential deficit of around \$44 million in available loan funds. It should be noted that several of the larger projects identified in Table 1 will receive disbursements over a 2-3 year period, and some of the projects with undisbursed balances will not draw 100% of their loan amount or portions of their project costs may be drawn from the state side of the program.

X. PROJECTS SUBJECT TO FEDERAL REQUIREMENTS

1. Equivalency Projects

Some projects previously funded from the SRF were identified as equivalency projects receiving funds "directly made available" by the capitalization grants (these are a subset of the cash draw projects). Therefore, they were required to comply with all federal requirements, including applicable Title II requirements contained in Section 602(b)(6) of the Water Quality Act of 1987. Federal equivalency projects were designated with "FE" in Table 1. All federal equivalency projects under Title II have been funded and closed out, so there are none listed in Table 1.

2. Post-Equivalency Projects

Some projects listed in Table 1 are identified as "post-equivalency" projects receiving funds "directly made available" by the capitalization grants (these are also a subset of the cash draw projects). These projects are required to comply with the requirements of Title VI of the Water Quality Act of 1987. These projects are also required to satisfy the Small Business in Rural Areas solicitation and Single Audit Act compliance requirements. Post-equivalency projects are designated with a "PE" in Table 1.

3. Cash Draw Projects

Projects selected to receive loans from the Federal SRF are designated as cash draw projects. All the projects listed in Table 1 are considered "cash draw" projects and include the equivalency, post-equivalency, and LRLP projects. They are required to comply with the requirements of Title VI of the Water Quality Act of 1987. Projects that are cash draw projects and not equivalency, post-equivalency, or LRLP projects are designated with "CD" in Table 1.

4. Land Recycling Loan Program Projects

Projects selected to receive loans from the \$20 million designated from the federal repayments shall include any projects on the LRLP project priority list, as amended. These projects are designated with "LR" in Table 1.

5. Federal Rural Hardship Grants Program Project

One project was found which met the criteria for funding under the Federal Rural Hardship Grants Program. This project was able to use all of the funds allocated to Wisconsin under this program. The project is designated with "FH" in Table 1.

Each Federal SRF project receives a type I, II, or III environmental review, as described by the Operating Agreement.

X. LIST OF PROJECTS

The Project Priority List and Intent to Apply List were reviewed to determine which eligible water quality projects should be funded by the Federal SRF. Projects listed in Table 1 are identified as federal SRF cash draw projects whose activities, or portions thereof, equal 120 percent or more of the cumulative grant amounts. The State will ensure these projects comply with all the requirements of Title VI of the Water Quality Act of 1987 and 40 CFR Part 35, Subpart K. The projects will receive loans from the Federal Account of the CWFP, which constitutes the Federal SRF. The Federal Project Priority List will be revised in accordance with 40 CFR Part 35, Subpart K, in the event that other projects are funded instead of or in addition to those listed in Table 1.

XI. CASH DRAW SCHEDULE

Cash draws on the FFY 2004 Capitalization Grant are estimated to begin in late 2004. The rate of outlays will depend on project schedules that are unknown at the present time.

Construction costs considered refinancing costs will be charged to one or more of the following:

- 1) the state match,
- 2) the portion of the capitalization grant that is immediately available for refinancing (\$2,000,000), based on the cash draw rules,
- 3) the Federal SRF account that accumulates interest and principal payments from SRF recipients,
- 4) the State accounts.

Non-reimbursable expenses and those in excess of funds available in the Federal SRF will be charged to State accounts at 100%.

The State will contribute a minimum state match of 20%. The state match is provided proportional to cash draws on the Capitalization Grant. No disbursement was made or will be made for either project or administrative costs unless proportional state match is also maintained. It is an absolute condition that GO proceeds are available before each disbursement.

XII. PROGRAM ADMINISTRATION COSTS

The total amount allowable under Section 603(d)(7) of the Water Quality Act of 1987 will be set aside for program administration. Four percent of the FFY 2003 capitalization grant (\$1,433,140) is requested for administration. Administrative costs will be requested on an as-needed basis. The administrative portion of this grant will be fully drawn shortly after the award of the grant.

XIII. PROJECTED ASAP INCREASES

U.S. EPA will employ the ASAP system to make payments of Federal funds under the loan program. The 4% administrative portion will be credited to the DNR ASAP Account #5547460 and the remainder will be credited to the DOA ASAP Account #5505051.

XIV. MODIFICATION PROCEDURES

Changes to the Intended Use Plan may occur if:

- 1) the costs of projects change prior to loan closing based on bids;
- 2) the projects listed in Table 1 are funded in a different fiscal year;
- 3) project(s) other than those listed in Table 1 are funded;
- 4) projects on the list receive financial hardship grant assistance.

If other projects are funded instead of or in addition to those listed in Tables 1 and 2, they would be among those listed in the State Project Priority List, as amended on the Federal Project Priority List. Therefore, the above types of changes would not require a public hearing. The SFY 2005 Annual Report will explain exceptions in the funding of projects concerning the above types of changes.

Changes beyond the types listed above will be submitted to EPA with a complete explanation, under the signature of the Wisconsin Project Officer.

XV. ASSURANCES

State assurances concerning the requirements of Sec. 602(b) of the Water Quality Act are contained in the Operating Agreement.